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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ANTONIO L. SUAREZ et al.,

Petitioners,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

WELLS FARGO BANK,

Real Party In Interest.

G042783

(Super. Ct. No. 30-2008-00109419)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Kazuharu Makino, Judge. Petition granted.

Law Offices of Mansfield Collins and Mansfield Collins for Petitioners.

No appearance for Respondent.

Anne M. Schauerma for Real Party in Interest.

* * *

THE COURT:*

The trial court denied petitioners' ex parte application to allow the late posting of jury fees even though the only evidence before it was a declaration from petitioners' counsel taking full responsibility for the mistake. Counsel stated petitioners had requested a jury trial in their case management conference statement, there was never any intent to waive their right to a jury trial, and he missed the deadline to post fees because he is a sole practitioner who was in trial in Los Angeles superior court when the fees were due and he "simply lost track of the time to post" them. Given no evidence was submitted which showed petitioners had waived the jury trial right or that real party in interest would be prejudiced by the granting of the relief sought, denial of the application was an abuse of discretion. (*Johnson-Stovall v. Superior Court* (1993) 17 Cal.App.4th 808, 810-812.)

Petitioners requested issuance of a peremptory writ of mandate. Real party in interest filed informal opposition to the petition but did not offer any substantive or procedural reason why relief should not be granted. Further proceedings would thus add nothing to our review. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

Let a peremptory writ of mandate issue directing the superior court to vacate and set aside its order denying petitioners' ex parte application for leave to allow the late posting of jury fees and to enter a new order granting it. Real party in interest suggested in its opposition that any relief should be conditioned on petitioners reimbursing it for its costs and fees in trial preparation. Under the specific facts of this case, of which the parties are obviously aware, we conclude the better approach is to leave the parties where we find them. Thus, real party in interest's request is denied, and in the interests of justice no fees or costs are awarded petitioners in this proceeding. The

* Before Sills, P. J., Rylaarsdam, J., and Ikola, J.

opinion is final as to this court forthwith. Having served its intended purpose, the stay previously issued by this court is dissolved upon issuance of the remittitur.